

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

**FILED**

NOV 5 2003

CLERK, U.S. DISTRICT COURT,  
WESTERN DISTRICT OF TEXAS  
BY                      DEPUTY CLERK

Board of Regents, The University of Texas  
System, and 3D Systems, Inc.,

Plaintiffs,

v.

EOS GmbH Electro Optical Systems,  
Defendant.

Civil Action No. A03 CA 113 SS

**DECLARATION OF PHILIP E. COOK IN SUPPORT OF  
PLAINTIFF 3D SYSTEMS, INC.'S MOTION TO COMPEL  
THE DEPOSITION OF EXPERT ALLAN LIGHTMAN, PH.D.  
AND REQUEST FOR EXPEDITED CONSIDERATION**

I, Philip E. Cook, declare that:

1. I am a partner with the law firm of Jones Day, admitted *pro hac vice* and counsel of record for plaintiffs Board of Regents, The University of Texas System ("UT"), and 3D Systems, Inc ("3D Systems") in this action. I have personal knowledge of the facts stated herein and if called as a witness, could and would competently testify hereto.

2. On October 15, 2003, during a teleconference between counsel for the parties that was initiated for the primary purpose of discussing the parties' views on *Markman* constructions for the patents-in-suit, I proposed to EOS's counsel that the parties stipulate in advance of filing their opening *Markman* briefs that any experts whose testimony was submitted in support of *Markman* arguments be available for deposition before response briefs were due. Although EOS refused to agree to such a stipulation, plaintiffs made clear their belief that any experts submitting such testimony would be subject to cross-examination by deposition.

3. On October 17, 2003, the parties appeared in court for a technical tutorial hearing. At that hearing, an individual sitting in the courtroom and apparently accompanying EOS's counsel was recognized by one of the individuals affiliated with plaintiffs. I was told that the individual was Dr. Allan Lightman, and that he was apparently working with EOS in some fashion.

4. On October 27, 2003, from a review of EOS's opening *Markman* brief, I learned for the first time that EOS had retained Dr. Lightman as an expert witness and had submitted a declaration from him in support of EOS's *Markman* brief. I first received a copy of Dr. Lightman's declaration on October 28, 2003 with my service copy of EOS's *Markman* papers.

5. Later that same day, I prepared and had served a Notice of Deposition of Allan J. Lightman in Lieu of Subpoena and Request for Production of Documents. A true copy of that October 28, 2003 Notice of Deposition is attached as Exhibit A.

6. In order to provide EOS's counsel with a copy of the deposition notice as soon as possible, I sent a copy of the Notice of Deposition to EOS's counsel by e-mail that same day, at approximately 1:00 PST. A true copy of my October 28, 2003 e-mail is attached as Exhibit B. As indicated in my e-mail, it was the practice of the parties for each of the expert witnesses they designated in the California EOS Litigation to accept a deposition notice in lieu of a subpoena.

7. Having not heard from EOS's counsel about Dr. Lightman's deposition, I called Mr. Michael Baniak the morning of October 30, 2003 to inquire about a mutually convenient date and location for the deposition. Mr. Baniak responded by telling me that EOS would not be producing Dr. Lightman for deposition and would be sending me a letter confirming that

position. That afternoon, I received a letter from Mr. Baniak, a true copy of which is attached as Exhibit C.

8. Attached as Exhibit D is a true copy of an e-mail from Allan J. Lightman to Michael Ervin at DTM, in which he reports having spent over 100 hours consulting with DTM in connection with the Midwest Litigation, and having billed over \$30,000 for that time. The production number on this document indicates that it was produced to EOS in connection with the California EOS Litigation.

9. Attached as Exhibit E is a true copy of Dr. Lightman's September 3, 1996 Expert Witness Report submitted by DTM in the Midwest Litigation. Attached as Exhibit F is a true copy of Dr. Lightman's August 14, 1998 Rebuttal Expert Witness Report submitted by DTM in the Midwest Litigation. The production numbers on these documents indicate that they were produced to EOS in connection with the California EOS Litigation. I am informed and believe that Dr. Lightman was never deposed in connection with the Midwest Litigation.

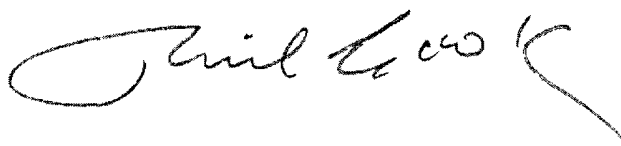
10. Attached as Exhibit G is a true copy of a May 24, 2002 retainer agreement between Allan J. Lightman and the law firm of Liner Yankelevitz Sunshine & Regenstreif, who was at that time counsel of record for 3D Systems and DTM Corporation in the California EOS Litigation. I am informed and believe that this letter agreement was signed by Dr. Lightman, and that it followed several discussions beginning in March 2002 with then counsel of record for 3D Systems and DTM Corporation in the California EOS Litigation.

11. Attached as Exhibit H is a true copy of a July 7, 2003 letter from Allan Lightman, Ph.D. terminating his consulting agreement with 3D Systems and DTM's counsel in the California EOS Litigation. Dr. Lightman was never disclosed as an expert witness, never

prepared an expert report, and was never deposed in connection with the California EOS Litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of November, 2003, at Los Angeles, California.

A handwritten signature in black ink, appearing to read "Philip E. Cook", with a stylized flourish at the end.

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PHILIP E. COOK

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was sent to the following counsel of record on this 5<sup>th</sup> day of November, 2003. in the following manner:

Thomas H. Watkins  
State Bar No. 20928000  
Albert A. Carrion, Jr.  
State Bar No. 03883100  
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*Via United States Mail*

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*Via Overnight Delivery*

Attorneys for Defendant  
EOS GMBH ELECTRO OPTICAL SYSTEMS



ELIZABETH J. BROWN FORE

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**NOTICE OF DOCUMENT(S) NOT IMAGED  
AND CONTAINED IN EXHIBIT FOLDER**

Civil Case No.      A:03-CA-113 SS

Board of Regents, The University of Texas System, and 3D  
Systems, Inc.

VS.

EOS GmbH Electro Optical Systems

Attachments to

Document #:          101

Description:          Declaration of Philip E. Cook in Support of  
Plaintiff 3D Systems, Inc.'s Motion to  
Compel the Deposition of Expert Allan  
Lightman, Ph.D. and Request for Expedited  
Consideration

Filed By:              Plaintiff

File Date:             11/5/03